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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a 501(c)(3) non-profit Public
14 Benefit Corporation,

15 Plaintiff,

16 v.

17 HONEYWELL AEROSPACE,
18 HONEYWELL INTERNATIONAL,
19 INC.,and DOES 1 -30, Inclusive,

20 Defendants

CASE NO. 3:11-cv-03723 EDL

PROOF OF SERVICE OF COMPLAINT

11 AUG -4 P3:15

DEPT. OF JUSTICE - ERD
ENVIRONMENT DIVISION

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**Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation
(Environmental - RCRA - 42 U.S.C. § 6901 *et seq.*, CWA - 33 U.S.C. § 1251 *et seq.*)**

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

[] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on August 3, 2011 at Santa Rosa, California.

Wojciech P. Makowski
Wojciech P. Makowski

**PAGE
BREAK**

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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 NORTHERN CALIFORNIA RIVER
WATCH, a 501(c)(3) NON-PROFIT
11 CORPORATION,

12 Plaintiff,
13 v.

14 HONEYWELL AEROSPACE,
HONEYWELL INTERNATIONAL,
15 INC., and DOES 1-30, INCLUSIVE,

16 Defendants.
/

CASE NO.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION
(Environmental - RCRA - 42 U.S.C. §
6901 *et seq.*; CWA - U.S.C. §1251 *et seq.*)**

17 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER (hereafter,
18 "PLAINTIFF") by and through its attorneys, and for its Complaint against Defendants,
19 HONEYWELL AEROSPACE, HONEYWELL INTERNATIONAL, INC., and DOES 1-30,
20 INCLUSIVE (hereafter, + "DEFENDANTS") states as follows:

21 **I. NATURE OF THE CASE**

22 1. This is a citizen's suit brought against DEFENDANTS under the citizen suit
23 enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901
24 *et seq.*, ("RCRA"), specifically RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) and
25 RCRA § 4005, 42 U.S.C. § 6945, to stop DEFENDANTS from repeated and ongoing
26 violations of the RCRA. These violations are detailed in the Notice of Violations and Intent
27 to File Suit dated October 1, 2010 ("RCRA NOTICE") a copy of which is attached hereto
28 as EXHIBIT A and made part of these pleadings.

1 2. As described in the RCRA NOTICE and in this Complaint, PLAINTIFF
2 alleges DEFENDANTS to be past generators, past transporters, or past operators of a
3 treatment, storage, or disposal facility, which has contributed or which is contributing to the
4 past handling, storage, treatment, transportation, or disposal of a solid or hazardous waste
5 which may present an imminent and substantial endangerment to health or the environment.
6 [42 U.S.C. § 6972(a)(1)(B)].

7 3. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), permits citizen suits to
8 enjoin pollution which creates or has the potential to create an imminent and substantial
9 endangerment to human health or the environment. RCRA provides for injunctive relief
10 pursuant to RCRA §§ 3008(a) and 7002(a), 42 U.S.C. §§ 6928(a) and 6972(a).

11 4. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future harm
12 and other relief for DEFENDANTS' alleged violations of the RCRA's prohibition against
13 creating an imminent and substantial endangerment to human health or the environment.

14 5. This is also a citizen's suit for relief brought by PLAINTIFF under the Clean
15 Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA") specifically 33 U.S.C. § 1311, 33 U.S.C. §
16 1342, and 33 U.S.C. § 1365, to stop DEFENDANTS from repeated and ongoing violations
17 of the CWA. These violations are detailed in the Notice of Violations and Intent to File Suit
18 dated October 1, 2010, ("CWA NOTICE") a copy of which is attached hereto as EXHIBIT
19 B and made part of these pleadings. PLAINTIFF contends DEFENDANTS are either
20 discharging pollutants from a point source without a National Pollutant Discharge
21 Elimination System ("NPDES") permit in violation of 33 U.S.C. § 1311(a), discharging
22 storm water without a NPDES permit in violation of 33 U.S.C. § 1342(p), or routinely
23 violating the terms of the NPDES permits which regulate stormwater discharges.

24 6. CWA § 402, 33 U.S.C. § 1342, requires dischargers to obtain a NPDES permit
25 to discharge any pollutant into waters of the United States. CWA § 301(a), 33 U.S.C. §
26 1311(a), prohibits the discharge of any pollutant unless in compliance with various
27 enumerated sections of the CWA, including CWA § 402, 33 U.S.C. § 1342.

1 7. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant
2 unless in compliance with various enumerated sections of the CWA, including CWA § 402,
3 33 U.S.C. § 1342, and provides for injunctive relief pursuant to CWA §§309(a) and 505(d),
4 33 U.S.C. §§ 1319(a), 1365(d).

5 8. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future
6 violations, the imposition of civil penalties, and other relief for DEFENDANTS' alleged
7 violations of the CWA.

8 **II. PARTIES TO THE ACTION**

9 9. Plaintiff NORTHERN CALIFORNIA RIVER WATCH is a 501(c)(3) non-
10 profit public benefit corporation duly organized under the laws of the State of California with
11 headquarters located at 500 North Main Street, Suite 110, Sebastopol, Sonoma County,
12 California. RIVER WATCH is dedicated to protecting, enhancing and helping to restore the
13 waters of Northern California including its drinking water sources, groundwater, rivers,
14 creeks and tributaries. Many of RIVER WATCH's members live in watershed areas
15 affected by the pollution from the site identified in the RCRA NOTICE and CWA NOTICE.
16 Said members have an interest in said watersheds which interest is or may be adversely
17 affected by the violations set forth in this Complaint. Said members use the affected
18 watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing,
19 swimming, hiking, photography, nature walks and aesthetic enjoyment. Furthermore, the
20 relief sought herein will redress the injury in fact, the likelihood of future injury and the
21 ongoing interference with the interests of RIVER WATCH's members.

22 10. PLAINTIFF is informed and believes, and on said information and belief
23 alleges that at all times relevant to these proceedings, Defendant HONEYWELL
24 AEROSPACE was and is a division of Defendant HONEYWELL INTERNATIONAL,
25 INC., a Delaware corporation, registered to do business in California, and doing business in
26 Torrance, California.

27 11. PLAINTIFF is informed and believes, and on said information and belief
28 alleges that Defendants DOES 1 - 30, INCLUSIVE, respectively are persons, partnerships,

1 corporations or entities, who are, or were, responsible for, or in some way contributed to, the
2 violations which are the subject of this Complaint or are, or were, responsible for the
3 maintenance, supervision, management, operations, or insurance coverage of the site
4 identified herein. The identities, capacities, and functions of DEFENDANTS DOES 1 - 30,
5 INCLUSIVE are presently unknown to PLAINTIFF, which shall seek leave of court to
6 amend this Complaint to insert the true names of said DOES Defendants when they have
7 been ascertained.

8 **III. JURISDICTIONAL ALLEGATIONS**

9 12. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1),
10 42 U.S.C. § 6972(a)(1), which states in part,

11 “ . . . any person may commence a civil action on his own behalf (A)
12 against any person . . . who is alleged to be in violation of any permit,
13 standard, regulation, condition requirement , prohibition or order which has
14 become effective pursuant to this chapter, or (B) against any person . . . who
15 has contributed or who is contributing to the past or present handling, storage,
16 treatment, transportation or disposal of any solid or hazardous waste which
17 may present an imminent and substantial endangerment to health or the
18 environment.”

19 13. PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own
20 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the
21 watersheds, land, rivers, and associated natural resources into which DEFENDANTS
22 pollute, or by which DEFENDANTS' operations adversely affect those members' interests,
23 in violation of RCRA § 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The health, economic,
24 recreational, aesthetic or environmental interests of PLAINTIFF and its members have been,
25 are being, and will continue to be adversely affected by DEFENDANTS' unlawful violations
26 as alleged herein. PLAINTIFF contends there exists an injury in fact, causation of that
27 injury by the DEFENDANTS' complained of conduct, and a likelihood that the requested
28 relief will redress that injury.

14. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. §6972(2)(A), PLAINTIFF gave
statutory notice of the RCRA violations alleged in this Complaint prior to the
commencement of this lawsuit to: (a) DEFENDANTS, (b) the United States Environmental

1 Protection Agency, both Federal and Regional, (c) the State of California Water Resources
2 Control Board, and (d) the State of California Integrated Waste Management Board.

3 15. Pursuant to RCRA § 7002(b), 42 U.S.C. § 6972(b) venue lies in this District
4 as the site and facility under DEFENDANTS' ownership or control and where illegal
5 activities occurred which are the source of the violations complained of in this action are
6 located within this District.

7 16. Subject matter jurisdiction is also conferred upon this Court by CWA §
8 505(a)(1), 33 U.S.C. § 1365(a)(1), which states in part that, "any citizen may commence a
9 civil action on his own behalf against any person . . . who is alleged to be in violation of (A)
10 an effluent standard or limitation . . . or (B) an order issued by the Administrator or a State
11 with respect to such a standard or limitation." For purposes of Section 505, "the term
12 'citizen' means a person or persons having an interest which is or may be adversely
13 affected."

14 17. PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own
15 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the
16 watersheds, land, rivers, and associated natural resources into which DEFENDANTS
17 pollute, or by which DEFENDANTS' operations adversely affect those members' interests,
18 in violation of CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. §
19 1365(a)(1), CWA § 402, 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and
20 environmental interests of PLAINTIFF's members may be, have been, are being, and will
21 continue to be adversely affected by DEFENDANTS' unlawful violations. PLAINTIFF
22 contends there exists an injury in fact, causation of that injury by DEFENDANTS'
23 complained of conduct, and a likelihood that the requested relief will redress that injury.

24 18. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave
25 statutory notice of the CWA violations alleged in this Complaint to: (a) DEFENDANTS, (b)
26 the United States EPA, Federal and Regional, and (c) the State of California Water
27 Resources Control Board.

1 19. Pursuant to CWA §505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this
2 Complaint has been served on the United States Attorney General and the Administrator of
3 the Federal EPA.

4 20. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this
5 District as the site and facility under DEFENDANTS' ownership or control and where illegal
6 activities occurred which are the source of the violations complained of in this action are
7 located within this District.

8 **IV. STATEMENT OF FACTS**

9 21. PLAINTIFF is informed and believes, and on said information and belief
10 alleges that DEFENDANTS are past generators, past transporters, or past operators of the
11 site and facility located at 511 O'Neill Avenue, Belmont California and further identified in
12 the RCRA NOTICE and CWA NOTICE ("the Site"), and have contributed to the past
13 handling, storage, treatment, transportation, or disposal solid or hazardous waste which may
14 present an imminent or substantial endangerment to health or the environment.

15 22. Regulatory agencies have designated surface and ground waters in the area of
16 the Site as capable of supporting multiple beneficial uses including water supply, recreation,
17 and habitat and have established Maximum Contaminant Levels and Water Quality
18 Objectives for these pollutants in surface and ground waters and California Toxic Rule
19 limitations for pollutants to surface waters.

20 23. Surface water and groundwater at and around the Site are potential sources of
21 drinking water under applicable Regional Water Quality Control Board Plans also known
22 as Basin Plans. PLAINTIFF is informed and believes, and on said information and belief
23 alleges that DEFENDANTS have discharged TCE (trichloroethylene), cis-1, 2-DCE (a
24 breakdown product of TCE), vinyl chloride and other pollutants to surface and groundwater
25 at and around the Site. TCE, DCE and vinyl chloride are known carcinogens or reproductive
26 toxins, and have been listed chemicals under Proposition 65.

27 24. DEFENDANTS' handling, use, transport, treatment, storage or disposal of
28 pollutants at the Site has occurred in a manner which has allowed significant quantities of

1 hazardous constituents to be discharged to soil, groundwater and surface waters beneath and
2 around the Site and beneath and around adjacent properties as well as off site into adjacent
3 surface waters. To date, the levels of these pollutants remain high above the allowable
4 Maximum Contaminant Levels, Water Quality Objectives and California Toxic Rule
5 limitations for said constituents, creating an imminent and substantial endangerment to
6 public health or the environment.

7 25. PLAINTIFF is informed and believes, and on said information and belief
8 alleges that DEFENDANTS have and are illegally continuing to discharge hazardous waste
9 in violations of RCRA and the CWA; that, DEFENDANTS have known of the
10 contamination at the Site for at least 20 or more years, or are also aware that continuing
11 discharges or failure to remediate the pollution allows the contamination to migrate through
12 the ground or groundwater at or adjacent to the Site or to continually contaminate or re-
13 contaminate actual or potential sources of drinking water as well as groundwater or surface
14 waters. The CWA and RCRA are strict liability statute. The range of dates covered by the
15 CWA NOTICE and RCRA NOTICE are the five year statute of limitations as discussed
16 therein.

17 26. The CWA regulates the discharge of pollutants into navigable waters. The
18 statute is structured in such a way that all discharge of pollutants is prohibited with the
19 exception of several enumerated statutory exceptions. One such exception authorizes a
20 polluter who has been issued a NPDES permit pursuant to the CWA, to discharge designated
21 pollutants at certain levels subject to certain conditions. Without a NPDES permit **all**
22 **surface and subsurface** discharges to waters of the United States are illegal.

23 27. PLAINTIFF is informed and believes, and on said information and belief
24 alleges DEFENDANTS have no NPDES permit allowing them to discharge pollutants from
25 the Site to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a)
26 and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p),
27 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a permit (33 U.S.C.
28 § 1342; 40 C.F.R. § 122.26).

1 28. PLAINTIFF is informed and believes, and on said information and belief
2 alleges that DEFENDANTS are discharging pollutants found at the Site, from the Site and
3 various point sources within the Site to waters of the United States; and, that the disposition,
4 discharge and release of pollutants from the Site to surface waters is on-going and has been
5 occurring for more than 20 years. The CWA is a strict liability statute. The range of dates
6 covered by the CWA NOTICE is the five year statute of limitations as discussed therein.

7 29. PLAINTIFF is informed and believes, and on said information and belief
8 alleges that DEFENDANTS' liability stems from their operation of the Site, or due to the
9 activities conducted on the Site by DEFENDANTS, their subsidiaries, contractors,
10 employees or agents.

11 30. The majority of the violations identified in the CWA NOTICE such as
12 discharging pollutants to waters of the United States without a NPDES permit, failure to
13 obtain a NPDES permit, failure to implement the requirements of the CWA, failure to meet
14 water quality objectives, etc., are continuous, and therefore each day is a violation.
15 PLAINTIFF alleges that all violations set forth in the CWA NOTICE are continuing in
16 nature or will likely continue after the filing of this Complaint. Specific dates of violations
17 are evidenced in DEFENDANTS' own records (or lack thereof) or files and records of other
18 agencies including the Regional Quality Control Board ("RWQCB"), GeoTracker, County
19 Health and local police and fire departments.

20 **V. FIRST CLAIM FOR RELIEF**

21 **Imminent and Substantial Endangerment to Health or the Environment**
22 **(42 U.S.C. § 6972(a)(1)(B))**

23 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 30
24 as though fully set forth herein. PLAINTIFF is informed or believes, and based on such
25 information and belief alleges as follows:

26 31. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) provides that any person
27 may commence a civil action against any person or governmental entity including a past
28 generator, or transporter or operator of a treatment, storage or disposal facility who has

1 contributed to the past storage or treatment or transportation, or disposal of any solid or
2 hazardous waste which may present an imminent and substantial endangerment to health or
3 to the environment. Civil penalties may be assessed against any person or entity in violation
4 of this section, under the provisions of RCRA, 42 U.S.C. §§ 6928 (a) or 6928(g).

5 32. The pollutants described in Paragraph 23 and in further detailed in the RCRA
6 NOTICE are known carcinogens or reproductive toxins, which when released into the
7 environment in sufficient quantity pose an imminent or substantial risk to public health or
8 to the environment in general. Amounts of these pollutants or other pollutants used, handled,
9 stored, transported, disposed of or treated by DEFENDANTS at the Site are in sufficient
10 quantity to pose an imminent or substantial risk to both the environment or to human health.

11 33. DEFENDANTS are of the class of entities covered by RCRA § 7002(a)(1)(B),
12 and are alleged to be past generators or past transporters or past operators of a treatment,
13 storage, or disposal facility, which has contributed or is contributing to the past or present
14 storage, treatment, transportation, or disposal of any solid or hazardous waste which may
15 present an imminent and substantial endangerment to health or the environment.

16 34. Continuing acts or failure to act by DEFENDANTS to address these violations
17 of the RCRA will irreparably harm PLAINTIFF for which harm PLAINTIFF has no plain,
18 speedy or adequate remedy at law.

19 Wherefore, PLAINTIFF prays judgment against DEFENDANTS as set forth
20 hereafter.

21 **VI. SECOND CLAIM FOR RELIEF**

22 **Creating Imminent and Substantial Endangerment to Health or the** 23 **Environment (42 U.S.C. § 6972(a)(1)(B)) specifically - Prohibition Against Open** **Dumping (42 U.S.C. § 6945)**

24 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 34
25 as though fully set forth herein. PLAINTIFF is informed or believes, and based on such
26 information and belief alleges as follows:

27 35. DEFENDANTS have engaged in open dumping by their discharge of
28 hazardous waste to open ground where said waste will and has contaminated the soils,

1 groundwater and surface waters as described herein and as further described in the RCRA
2 NOTICE.

3 36. The Site does not qualify as a landfill under 42 U.S.C. § 6944, and does not
4 qualify as a facility for the disposal of hazardous waste.

5 37. DEFENDANTS have no RCRA-authorized permit for the disposal, storage or
6 treatment of solid or hazardous waste of the type currently and historically discharged at the
7 Site.

8 38. Information currently available to PLAINTIFF indicates that DEFENDANTS'
9 open dumping in violation of RCRA § 4005 has occurred every day since at least October
10 1, 2005, or on numerous separate occasions, and that those violations are continuing.

11 39. Continuing activities by DEFENDANTS as alleged herein irreparably harm
12 PLAINTIFF, for which harm PLAINTIFF has no plain, speedy or adequate remedy at law.

13 Wherefore, PLAINTIFF prays judgment against DEFENDANTS as set forth
14 hereafter.

15 **VII. THIRD CLAIM FOR RELIEF**

16 **Discharge of Pollutants from a Point Source Must be Regulated by a NPDES**
17 **Permit (33 U.S.C. § 1342(a) and §1342(b); 33 U.S.C. § 1311)**

18 PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1
19 through 39 above as though fully set forth herein. PLAINTIFF is informed or believes, and
20 based on such information and belief alleges as follows:

21 40. DEFENDANTS have violated and continue to violate the CWA as evidenced
22 by the discharges of pollutants from a point source without a NPDES permit in violation of
23 CWA § 301, 33 U.S.C. § 1311.

24 41. The violations of DEFENDANTS are ongoing and will continue after the
25 filing of this Complaint. PLAINTIFF alleges herein all violations which may have occurred
26 or will occur prior to trial, but for which data may not have been available or submitted or
27 apparent from the face of the reports or data submitted by DEFENDANTS to the RWQCB
28 or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional

1 amended complaints if necessary to address DEFENDANTS' State and Federal violations
2 which may occur after the filing of this Complaint. Each of DEFENDANTS' violations is
3 a separate violation of the CWA.

4 42. PLAINTIFF alleges that without the imposition of appropriate civil penalties
5 and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate the
6 CWA as well as State and Federal standards with respect to the enumerated discharges and
7 releases identified in this Complaint and more specifically in the CWA NOTICE. Further,
8 that the relief requested in this Complaint will redress the injury to PLAINTIFF and its
9 members, prevent future injury, and protect the interests of PLAINTIFF and its members
10 which are or may be adversely affected by DEFENDANTS' violations of the CWA, as well
11 as other State and Federal standards.

12 **VIII. FOURTH CLAIM FOR RELIEF**

13 **Discharge of Stormwater or Stormwater Containing Pollutants Without a** 14 **NPDES Permit or in Violations of the California General Stormwater Permit** **(33 U.S.C. § 1342(p))**

15 PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1
16 through 42 above as though fully set forth herein. PLAINTIFF is informed or believes, and
17 based on such information and belief alleges as follows:

18 43. California's General Stormwater permit program ("General Permit") prohibits
19 discharges of storm water contaminated with industrial pollutants, which are not otherwise
20 regulated by a NPDES permit, to storm sewer systems or waters of the United States.

21 44. DEFENDANTS are not in compliance with CWA § 402(p) which requires
22 dischargers to acquire a NPDES permit for the discharge of stormwater, or to file for
23 coverage under the General Permit.

24 45. DEFENDANTS have violated and continue to violate the CWA and the
25 General Permit as evidenced by the discharges of storm water containing pollutants to the
26 affected water bodies as described in the CWA NOTICE, in violation of CWA § 301 and
27 CWA § 402(p). Any violations of the General Permit are violations of the CWA. The
28

1 violations of DEFENDANTS are ongoing and will continue after the filing of this
2 Complaint.

3 46. PLAINTIFF alleges that without the imposition of appropriate civil penalties
4 and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate the
5 CWA as well as State and Federal standards with respect to the enumerated discharges and
6 releases described in the CWA NOTICE. Further, that the relief requested in this Complaint
7 will redress the injury to PLAINTIFF and its members, prevent future injury, and protect the
8 interests of PLAINTIFF's members which are or may be adversely affected by
9 DEFENDANTS' violations of the CWA, as well as other State and Federal standards.

10 **IX. PRAYER FOR RELIEF**

11 RIVER WATCH prays this Court grant the following relief:

12 1. Declare DEFENDANTS to have violated and to be in violation of RCRA for
13 discharging pollutants which are known carcinogens and/or reproductive toxins in sufficient
14 quantities to pose an imminent and substantial risk to human health and the environment;

15 2. Enjoin DEFENDANTS from discharging pollutants and their constituents from
16 the Site, which petroleum products and constituents pose an imminent and substantial risk
17 to health and the environment;

18 3. Enjoin DEFENDANTS from continued violations of RCRA;

19 4. Order DEFENDANTS to fully investigate the Site, which investigation shall
20 include:

21 a. Completion of Site Delineation, to include the characterization of the
22 nature and extent of all underground contaminant plume(s) and the nature and
23 extent of any commingled plumes which may be entering the Site from offsite
24 locations;

25 b. Comprehensive Sensitive Receptor Survey, to include an adjacent
26 surface water study, water supply survey, and building conduit survey;

1 c. Aquifer Profile Study, to include identification of all water bearing
2 strata and whether subsurface groundwater at the Site is in communication
3 with other aquifers; and, testing of all aquifers determined to be in
4 communication with the contaminated soil and groundwater zones for all
5 known pollutants;

6 d. Conduit/Preferential Pathway Study, to include identification of all
7 conduits or preferential pathways such as sand and gravel lenses, utility lines,
8 underground pipes, storm drains, roads, services and other potential pathways
9 for contaminant migration. Such conduits and preferential pathways found to
10 have intersected the plume should be tested for the presence of petroleum
11 contaminants;

12 e. Identification and Testing of Water Supply Wells, to include a door-to-
13 door survey of potentially affected properties to determine the presence and
14 location of any water supply wells (whether permitted or not). Any water
15 supply wells within the potential range of the contaminant plumes to be tested
16 for the presence of petroleum contamination;

17 f. Surface Water Survey, to include a determination as to the extent to
18 which any surface waters have been or have the potential of being
19 contaminated from the Site. To conduct acute and chronic toxicity testing of
20 affected species including invertebrates. All surface waters and drainage
21 within 2,500 feet of the outer extent of the plume to be tested;

22 g. Vapor Intrusion Study, to include a study of any buildings at the Site
23 as well as buildings located on or off-site within the contaminated zone; and,

24 h. Determination of Mass of Plume Constituents, to include on-going
25 mass calculation of the plume constituents and masses of the various
26 pollutants at the Site, whether or not part of the plume.
27
28

5. Enjoin DEFENDANTS from violating the CWA;
6. Require DEFENDANTS to abate their discharges to surface waters;
7. Require DEFENDANTS to conduct acute and chronic toxicity testing of affected species including invertebrates;
8. Order DEFENDANTS to fully remediate the Site reducing all contaminants of concern in the groundwater to below Water Quality Objectives within 5 years;
9. Order DEFENDANTS to pay civil penalties to the United States on a per violation/per day basis for the violations of the CWA alleged in this Complaint;
10. Order DEFENDANTS to pay RIVER WATCH's reasonable attorneys' fees or costs (including expert witness fees), as provided by law; and,
11. Grant such other or further relief as may be just or proper.

DATED: July 26, 2011

LAW OFFICE OF JACK SILVER

By: 

JACK SILVER
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
llm28843@shcglobol.net



VIA REGISTERED MAIL - RETURN RECEIPT REQUESTED

October 1, 2010

Owner/Managing Agent
Honeywell Aerospace, a division of
Honeywell International, Inc.
2525 West 190th Street
Torrance, CA 90504

Purex Industries, Inc.
c/o United States Corporation Company,
Registered Agent
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Re: Notice of Violations and Intent to File Suit under the Resource Conservation and Recovery Act

To Whom It May Concern:

NOTICE

On behalf of Northern California River Watch and its members ("River Watch"), I am providing statutory notification to Honeywell Aerospace and Purex Industries, Inc. ("Honeywell,") of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6901 *et seq.*, at the facilities and site located at 551 O'Neill Avenue in the City of Belmont, San Mateo County, California (the "Site").

RCRA requires that 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, a private party must give notice of the violation to the alleged violator, the

Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred. If the alleged violator is a State or local agency, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of that agency. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*)

RCRA also requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*)

Subchapter C of RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment.

As discussed below, Honeywell operated a non-permitted, hazardous waste treatment, storage and disposal site. Honeywell has either failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, or has failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Honeywell is disposing wastes off-site without compliance with either the various requirements under RCRA, or with the State of California's hazardous waste requirements authorized under RCRA. Honeywell's mishandling of wastes in violation of Subchapter C of RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. River Watch alleges violations of Subchapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, as well as for violations which create an imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies Honeywell that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence a civil action against Honeywell on the following grounds:

1. Honeywell's use and storage of solvents at the Site has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of solvent in above and under ground storage tanks - 42 U.S.C. § 6972(a)(1)(A);

2. Honeywell's operations at the Site have caused solvent contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment - 42 U.S.C. § 6972(a)(1)(B);
3. Honeywell's past and current operations at the Site violate the provisions of subchapter III of RCRA, specifically 42 U.S.C. § 6924, which governs the mishandling of hazardous wastes. River Watch contends Honeywell has inadequately maintained records with respect to the manner in which its hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which has presented a substantial endangerment to human health and to the environment.

Under RCRA, notice to a violator regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under RCRA shall include sufficient information to permit the recipient of the notice to identify the permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation (or reasonable range), and the full name, address, and telephone number of the person or entity giving notice. River Watch therefore provides the following information:

1. The standard, limitation, or order alleged to have been violated.

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. Its goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes. The Environmental Protection Agency's ("EPA") waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to RCRA, the State of California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

Honeywell's use and storage of waste at the Site, and the disposal of those wastes as described in this Notice, has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding

hazardous waste. (42 U.S.C. § 6972(a)(1)(A)). The contamination at the Site stems from Honeywell's violations of 42 U.S.C. § 6972(a)(1)(A) and Honeywell has a continuing obligation to investigate and remediate the Site.

Honeywell's operations at the Site have caused or threaten to cause contamination of soil, groundwater, surface waters and residential areas, which contamination presents an imminent and substantial endangerment to human health and the environment. Honeywell owns or operates discreet conveyances, preferential pathways or wells which have contributed to the transportation, treatment, storage, or disposal of the wastes at the Site. (42 U.S.C. § 6972(a)(1)(B)).

2. The Activity Alleged to Constitute a Violation

Narratives are set forth below describing with particularity the activities leading to the violations alleged in this Notice. In summary, RCRA requires that the environment and public be protected from the hazardous wastes generated by Honeywell. Pollutants found at the Site as described herein constitute solid and hazardous waste under RCRA, and are required to be managed so as to not cause endangerment to the public or the environment. RCRA specifically protects groundwater.

The liability of Honeywell stems from its former ownership and operation of the Site and activities conducted on the Site by Honeywell which violate RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges Honeywell to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA.

Honeywell is guilty of open dumping, as that term is used in RCRA, by discharging pollutants to the open ground, thereby allowing these pollutants to discharge to both groundwater and surface waters. The Site does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Honeywell has no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Site.

The liability of Honeywell also stems from its past ownership or operation of discrete conveyances, preferential pathways or wells which have caused pollutants to be discharged to groundwater and surface waters via Honeywell's conduits such as pipes, sewer lines, storm drains, utilities and the like, facilitating pollutant migration and discharge to waters of the State of California and waters of the United States, and contributing to the past or present

handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Honeywell's past and current operations at the Site violate provisions of RCRA, 42 U.S.C. § 6924, which govern the mishandling of hazardous wastes.

River Watch contends Honeywell has inadequately maintained records of the manner in which its hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which has presented a substantial endangerment to human health and to the environment.

3. The discharger responsible for the alleged violation.

The discharger(s) responsible for the alleged violations are Honeywell Aerospace and Purex Industries Inc.

4. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

RCRA is a strict liability statute with a statute of limitations of 5 years; therefore, although violations of RCRA by Honeywell have occurred for more than 5 years, the range of dates covered by this Notice is October 1, 2005 through the date of this Notice. River Watch will from time to time update and supplement this Notice to include all violations by Honeywell which occur after the date of this Notice.

The majority of the violations identified in this Notice such as: threatening to and discharging pollutants to groundwater and surface waters; failure to obtain RCRA-authorized permits; failure to implement the requirements of RCRA; failure to properly label, track or report the type, quantity or disposition of waste; failure to use a manifest system to ensure waste generated is properly handled, stored, treated or disposed of; and, failure to meet water quality objectives, are continuous. Therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of the other violations are evidenced in Honeywell's own records (or lack thereof) or files and records of other regulatory agencies including the Regional Water Quality Control Board ("RWQCB"), GeoTracker, San Mateo County Health and local police and fire departments.

5. The full name, address, and telephone number of the person giving notice.

The entity giving notice is Northern California River Watch, identified throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, located at 500 North Main Street, Suite 110, Sebastopol, CA, 95472 - telephone (707) 824-4372. River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

The violations of Honeywell as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by these violations of the RCRA by Honeywell.

River Watch has retained legal counsel to represent it and its members in this matter. All communications should be addressed to:

Jack Silver
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
Fax: (707) 528-8675
Email: lhm28843@sbcglobal.net

BACKGROUND HISTORY

The Site is located in a mixed use area of Belmont, and consists of approximately 0.4 acres. It is located one mile west of the San Francisco Bay. The current owners of the property are W. Howard Jones and Catherine Jones.

The Currier Company opened the Site in 1960 and later with Baron-Blakeslee, Inc. operated a solvent sales and recycling company until 1972. On June 30, 1970 Baron-Blakeslee, Inc. merged with Purex Corporation, later acquired by Purex Industries, Inc. In 1985, all assets and liabilities of Baron-Blakeslee, Inc. were sold to Allied Corporation (AlliedSignal) which merged with Honeywell Inc.

The Site is at a surveyed elevation of approximately 10 feet above mean sea level (msl), and is relatively flat. Sediments of the Site are mapped as unconsolidated, alluvial sediments with interbedded sands and gravel underlain by bedrock. On-site groundwater is 2-12 feet below ground surface. The groundwater flow is east northeast toward Belmont Creek and Redwood Shore Lagoon. Groundwater flow is affected by a bedrock channel, tidal action in Belmont Creek and the saltwater interface. Belmont Creek is a water of the United States which drains to San Francisco Bay.

Beneficial uses of the groundwater include municipal and domestic water supply, industrial process water supply, industrial service water supply, agricultural water supply, and freshwater replenishment to surface water. Beneficial uses of Belmont Creek include water contact and non-contact recreation, wildlife habitat, cold freshwater and warm freshwater habitat and estuarine habitat.

In 1990, volatile organic compounds ("VOCs") were detected in the groundwater at the Site, and were also detected in adjacent sites. The primary chemicals of concern are TCE (trichloroethylene), cis-1,2-DCE (a breakdown product of TCE), and vinyl chloride. TCE is in the soil in levels up to 81 mg/kg and in the groundwater at levels of 740,000 µg/L. Off-site TCE levels are as high as 380,000 µg/L. The high concentration of TCE suggests a dense non-aqueous phase liquid in the soils. The TCE plume is approximately 2,400 feet long and 1,000 feet wide. Cis-1,2-DCE is in the groundwater at levels of 13,000 µg/L. Vinyl chloride is in the groundwater at levels of 8,100 µg/L.

TCE dissolves little in water but can remain in groundwater and soils for a long time. TCE can cause headaches, lung irritation, dizziness, poor coordination, difficulty concentrating, impair heart function, cause an increase in cancer, cause nerve, kidney and liver damage and death. The California primary maximum contaminant level of 5 µg/L. The maximum contaminant level for cis-1,2-DCE is 6 µg/L. Vinyl chloride can cause headaches, dizziness, drowsiness, loss of consciousness, liver degeneration and is a known carcinogen. The maximum contaminant level for vinyl chloride is 0.5 µg/L.

The Site remains a threat to the human population and the local area environment. No estimates of the residual contaminant plume mass have been found, and no estimate of the length of time to remediate the site to below California's Maximum Contaminant levels or Water Quality Objectives have been done. River Watch believes Honeywell must work much more proactively to remediate the soil and groundwater beneath and around this Site by employing best available technology as required by the RWQCB's Water Quality Control Plan or Basin Plan.

River Watch seeks engineering assurances that the underlying aquifers are not at risk; and, that residual contamination at the Site is not migrating to outlying groundwater and potentially to surface waters in the area. Proactive remediation using "best available technology" must be implemented, and some efforts to estimate the residual plume mass and the amount of time necessary to remediate the Site must be accomplished in keeping with standard cleanup protocols in the industry.

REGULATORY STANDARDS

RCRA of 1976 is a Federal law of the United States, the goals of which are protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater which has been contaminated by hazardous waste and hazardous products, including VOCs and vinyl chloride. RCRA is a strict liability statute with a statute of limitations of 5 years. Pursuant to RCRA, California has enacted laws and regulations which must be observed in conjunction with provisions of RCRA.

California's WQOs exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist. The most stringent WQOs for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

The RWQCB has adopted a Water Quality Control Plan or Basin Plan which designates all surface and groundwater within the North Coast Region as capable of supporting domestic water supply.

VIOLATIONS

1. Permits, Standards and Regulations - (42 U.S.C. § 6972(a)(1)(A))

Specifically, with respect to the Site, River Watch contends Honeywell is responsible for the following statutory violations:

1. Failure to prevent a release, in violation of 40 CFR §§280.30, 280.31 and California Health & Safety Code §§25292.1(a) - (c), 25292.3(a) and (b);
2. Failure to properly detect and monitor releases, in violation of 40 CFR §§ 280.40 -280.44 and California Health & Safety Code §25292;

3. Failure to properly report and keep records of the release, in violation of 40 CFR §§280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§25289, 25293 and 25295(a)(1); and,
4. Failure to take proper corrective action, in violation of 40 CFR §§280.53, 280.60 -280.66 and California Health & Safety Code §25295(a)(1).

2. Imminent and Substantial Endangerment - (42 U.S.C. §6972(a)(1)(B))

Between October 1, 2005 and October 1, 2010, Honeywell used and stored solvents at the Site in a manner which has allowed significant quantities of hazardous solvent constituents to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. The contaminant levels of TCE, cis-1,2-DCE and vinyl chloride in groundwater at the Site are significantly greater than the allowable MCLs and/or WQOs for said constituents. TCE and vinyl chloride are known or suspected carcinogens. All are known to harm both plants and animals. In their concentration at the Site, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

3. Mishandling of Hazardous Waste - (42 U.S.C. § 6924 *et seq.*)

Between October 1, 2005 and October 1, 2010, Honeywell has caused and/or allowed significant quantities of hazardous constituents as identified in this Notice to be discharged to soil and groundwater beneath the Site and beneath adjacent properties.

River Watch alleges Honeywell has at all times material, engaged in the following activities or omissions in violation of RCRA's waste handling provisions:

1. Failed to adequately maintain records of hazardous wastes as described in this Notice which were treated, stored or otherwise disposed of on or offsite - 42 U.S.C. §6924(a)(1);
2. Failed to satisfactorily monitor, inspect, or report in accordance with the provisions of the RCRA - 42 U.S.C. §6924(a)(2);
3. Failed to adequately treat, store, or properly dispose of hazardous wastes found at the Site - 42 U.S.C. § 6924(a)(3);
4. Failed to adequately locate, design and construct hazardous waste treatment, storage or disposal facilities - 42 U.S.C. § 6924(a)(4); and,

5. Failed to properly implement contingency plans for effective action to minimize unanticipated damage from treatment, storage or disposal of hazardous waste found at the Site - 42 U.S.C. § 6924(a)(5).

These pollutants in their concentration at the Site have continued to cause an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that Honeywell has used, stored and sold solvent products the Site which are known to contain hazardous substances; and, has intended that such products will be sold to and used by the public. Honeywell has known of the contamination at the Site for numerous years and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site and to continually contaminate and re-contaminate actual and potential sources of drinking water as well as surface waters.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA by Honeywell as evidenced by information which becomes available to River Watch after the date of this Notice.

Violations of RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

CONCLUSION

As stated in the NOTICE section above, RCRA requires a private party to give notice of the violation 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA. (42 U.S.C. § 6972(b)(1)(A)), and 90 days prior notice when the violation is alleged to have occurred before initiating an action for an imminent and substantial endangerment to human health or the environment. (42 U.S.C. § 6972(b)(2)(A)).

However, actions that allege violations of Subtitle C, including the mishandling of hazardous waste, can be brought without observing the 60/90 day notice waiting periods which are applicable to 42 U.S.C. § 6972(a)(1)(A) and 42 U.S.C. § 6972(a)(1)(B) claims; and, when Subtitle C claims are brought in conjunction with 42 U.S.C. § 6972(a)(1)(A) or 42 U.S.C. § 6972(a)(1)(B) claims, none of the claims require a waiting period before a lawsuit under the provisions of RCRA may be filed.

River Watch believes this Notice sufficiently states grounds for filing a lawsuit under the statutory and regulatory provisions of RCRA as to the Site. Within 30 days of service of this Notice letter alleging violations of RCRA Subtitle C, subchapter III, River Watch intends to file suit against Honeywell under the provisions of RCRA with respect to each of the violations as alleged herein, and the existing conditions at the Site.

However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Honeywell wishes to pursue such discussions in the absence of litigation, you are encouraged to initiate such discussions within 10 days of receipt of this Notice. River Watch will not delay the filing of a lawsuit if discussions have not commenced within that period of time.

Very truly yours,


Jack Silver

JS:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "I" Street
Sacramento, CA 95814

California Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

California Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812-2815

Honeywell International, Inc.
c/o Lawyers Incorporating Service, Reg. Agent
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Mr. W. Howard Jones
Mrs. Catherine Jones
1471 Woodberry Avenue
San Mateo, CA 94403

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469
Phone 707-528-8175
lhm28843@shcglobal.net

Santa Rosa, California 95402
Fax 707-528-8675



VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

October 1, 2010

Owner/Managing Agent
Honeywell Aerospace, a division of
Honeywell International, Inc.
2525 West 190th Street
Torrance, CA 90504

Purex Industries, Inc.
c/o United States Corporation Company,
Registered Agent
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Mr. W. Howard Jones
Mrs. Catherine Jones
1471 Woodberry Avenue
San Mateo, CA 94403

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

NOTICE

Clean Water Act ("CWA" or "Act") § 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of his/her intent to sue to the alleged violator, the EPA (both local

and federal), the State in which the violations occur and if the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent with a copy sent to the registered agent of the corporation.

I am writing on behalf of Northern California River Watch ("River Watch") with regard to the discharges of pollutants into waters of the United States in violation of the CWA, from the facilities of Honeywell Aerospace located at 551 O'Neill Avenue in Belmont, California, formerly facilities of Baron-Blakeslee, Inc. and Purex Industries, Inc., on property currently owned by W. Howard and Catherine Jones. For purposes of this Notice, Baron-Blakeslee, Inc., Purex Industries, Inc., Honeywell Aerospace and Mr. and Mrs. Jones are hereafter collectively be referred to as "Polluters" and the 551 O'Neill Avenue, Belmont California facilities will be referred to as the "Site."

This letter constitutes notice of Polluters' continuing and ongoing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by the illegal discharging of pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. The specific standard, limitation, or order alleged to have been violated

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit pursuant to the Act, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without an NPDES permit **all surface and subsurface** discharges from to waters of the United States are illegal.

Belmont Creek is a water of the United States. According to records on file with the Regional Water Quality Control Board ("RWQCB,") former point sources from the Site continue to discharge pollutants to Belmont Creek. River Watch contends Polluters do not have a NPDES permit for discharging pollutants of the kind described herein to waters of the United States. River Watch hereby notifies Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants to waters of the United States from the Site and numerous point sources within the Site including: the above and below ground storage tanks; chemical storage; recycling equipment; waste ponds and solvent transfer equipment identified in the various records of Polluters and the regulatory agencies which have oversight of the Site as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p), 33 U.S.C. 1342(p).

2. The activity alleged to constitute a violation

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary the Act requires that all discharges of pollution from a point source to a water of the United States without a NPDES permit are prohibited. Polluters are discharging pollutants including TCE and vinyl chloride from the Site and various point sources within the Site to waters of the United States. The point sources were above and below ground storage tanks; chemical storage; recycling equipment; waste ponds and solvent transfer equipment which were removed from the Site. The solid and hazardous waste which was discharged from these tanks is also a point source. These point sources continue to discharge from the Site through conduits, that act as preferential pathways, to the estuary adjacent to the Site. The liability of Polluters stems from their ownership or operation of the Site or due to the activities conducted on the Site by Polluters.

3. The discharger responsible for the alleged violation.

The dischargers responsible for the alleged violations are the addressees of this Notice, referred to as "Polluters" throughout this Notice.

4. The location of the alleged violation.

The location or locations of the various violations is 551 O'Neill Avenue, Belmont, California, referred to as the "Site" throughout this Notice, as identified in the narrative section of this Notice and in records either created or maintained by or for Polluters which relate to Polluters' activities at the Site.

5. The date or dates of violations, or a reasonable range of dates during which the alleged activities constituting violations occurred.

Disposition, discharge and release of pollutants can be traced as far back as at least October 1, 2005. The CWA is a strict liability statute with a statute of limitations of 5 years; therefore, the range of dates covered by this Notice is October 1, 2005 through October 1, 2010.

River Watch will from time to time update and supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the Act, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit.

Specific dates of violations are evidenced in Polluters own records (or lack thereof) or files and records of other agencies including the RWQCB, GeoTracker, San Mateo County Health and local police and fire departments.

6. The full name, address, and telephone number of the person or entity giving notice.

The entity giving this notice is Northern California River Watch, 500 North Main Street, Suite 110, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, Email US@ncriverwatch.org, referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of River Watch members who reside, work and recreate in the affected area. River Watch members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, property rights, use and enjoyment of this area is specifically impaired by Polluters' violations of the CWA as alleged herein.

River Watch has retained legal counsel to represent it in this matter. All communications should be addressed to:

Jack Silver
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: 707-528-8175
Fax: 707-526-8675
Email: lhm28843@sbcglobal.net

BACKGROUND

The Site is located in a mixed use area of Belmont, and consists of approximately 0.4 acres. It is located one mile west of the San Francisco Bay. The Currier Company opened the Site in 1960 and later with Baron-Blakeslee, Inc. operated a solvent sales and recycling company until 1972. On June 30, 1970 Baron-Blakeslee, Inc. merged with Purex Corporation, later acquired by Purex Industries, Inc. In 1985, all assets and liabilities of Baron-Blakeslee, Inc. were sold to Allied Corporation (AlliedSignal) which merged with Honeywell Inc.

The Site is at a surveyed elevation of approximately 10 feet above mean sea level (msl), and is relatively flat. Sediments of the Site are mapped as unconsolidated, alluvial sediments with interbedded sands and gravel underlain by bedrock. Groundwater at the unconfined surface aquifer is 2-12 feet below ground surface. The groundwater flow is east northeast toward Belmont Creek and Redwood Shore Lagoon. Groundwater flow is affected by a bedrock channel, tidal action in Belmont Creek and the saltwater interface. Belmont Creek, a water of the United States which drains to San Francisco Bay, is contaminated with pollutants which are the same as those found at the Site.

Beneficial uses of the groundwater include municipal and domestic water supply, industrial process water supply, industrial service water supply, agricultural water supply, and freshwater replenishment to surface water. The beneficial uses of Belmont Creek include water contact and non-contact recreation, wildlife habitat, cold freshwater and warm freshwater habitat and estuarine habitat.

Volatile organic compounds ("VOCs") were detected in the groundwater at the Site in 1990, and were also detected in adjacent sites. The RWQCB has indicated these pollutants originated from point sources within the Site. The primary chemicals of concern are TCE

(trichloroethylene), cis-1,2-DCE (a breakdown product of TCE), and vinyl chloride. TCE is in the soil in levels up to 81 mg/kg and in the groundwater at levels of 740,000 µg/L. Off-site TCE levels are as high as 380,000 µg/L. The high concentration of TCE suggests a dense non-aqueous phase liquid in the soils. The TCE plume is approximately 2,400 feet long and 1,000 feet wide. Cis-1,2-DCE is in the groundwater at levels of 13,000 µg/L. Vinyl chloride is in the groundwater at levels of 8,100 µg/L.

TCE dissolves little in water but can remain in groundwater and soils for a long time. TCE can cause headaches, lung irritation, dizziness, poor coordination, difficulty concentrating, impair heart function, cause an increase in cancer, cause nerve, kidney and liver damage and death. The California primary maximum contaminant level of 5 µg/L. The maximum contaminant level for cis-1,2-DCE is 6 µg/L. Vinyl chloride can cause headaches, dizziness, drowsiness, loss of consciousness, liver degeneration and is a known carcinogen. The maximum contaminant level for vinyl chloride is 0.5 µg/L.

CONTINUING VIOLATIONS

Existing records indicate that pollutants continue to be discharged from the Site to waters of the United States. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Polluters as identified in this Notice are prohibited by law. Beneficial uses of surface waters are being affected in a prohibited manner by these violations. The EPA and the State of California have identified Polluters' operations at the Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

From October 1, 2005 through October 1, 2010, Polluters have violated the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA. These enumerated violations are based upon review of the RWQCB files and Geotracker files for Polluters, as well as other files publicly available. In addition to all of the above violations, this Notice covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed to submit) to the RWQCB and/or other regulatory agencies during the period October 1, 2005 through October 1, 2010.

This Notice also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the RWQCB, Geotracker or other agencies.

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above-described violations of the Act subjects the violator to a penalty per day/per violation, for violations occurring within 5 years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Act pursuant to CWA § 505(a) and § 505(d), 33 U.S.C. § 1365(a) and § 1365(d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

CONCLUSION

River Watch believe this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under Act against Polluters for the violations of the CWA enumerated herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice. However, if Polluters wish to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated within the next 20 days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,


Jack Silver

JS:lhbm

cc:

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